



## SUSQUEHANNA RIVER BASIN COMMISSION

### 18 CFR Part 806

#### Review and Approval of Projects

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: This document contains proposed rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to include special requirements for withdrawals from surface water and groundwater sources which, from the point of taking or point of impact respectively, have a drainage area of equal to or less than ten square miles (headwater area); and to modify provisions relating to the issuance of emergency certificates by the Executive Director.

DATES: Comments on these proposed rules may be submitted to the Commission on or before February 25, 2013. The Commission has scheduled a public hearing on the proposed rulemaking, to be held February 14, 2013, in Harrisburg, Pennsylvania. The location of the public hearing is listed in the addresses section of this notice.

ADDRESSES: Comments may be mailed to: Mr. Richard A. Cairo, Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391, or by email to [rcairo@srbc.net](mailto:rcairo@srbc.net).

The public hearing will be held on February 14, 2013, at 3:00 p.m., at the Pennsylvania State Capitol, Room 8E-B, East Wing, Commonwealth Avenue, Harrisburg, Pa. 17101. Those wishing to testify are asked to notify the Commission in advance, if possible, at the regular or electronic addresses given below.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 306; fax: 717-238-2436; e-mail: [rcairo@srbc.net](mailto:rcairo@srbc.net). Also, for further information on the proposed rulemaking, visit the Commission's web site at [www.srbc.net](http://www.srbc.net).

#### SUPPLEMENTARY INFORMATION:

##### Background and Purpose of Amendments

The basic purpose of the regulatory amendments set forth in this proposed rulemaking is to make further modifications to the Commission's project review regulations relating to surface and groundwater withdrawal limitations in headwater areas, and also relating to the issuance of emergency certificates by the Executive Director.

The Commission adopted a Low Flow Protection Policy (LFPP) on December 14, 2012. The purpose of the LFPP is to provide implementation guidance to the Commission staff, project sponsors and the public on the criteria, methodology, and process used to evaluate withdrawal applications to ensure that any flow alteration related to such withdrawals does not cause significant adverse impacts to the water resources of the basin.

When first released in draft form for public review in March 2012, the LFPP included certain restrictions on water withdrawals in headwater areas. Those provisions were removed from the policy upon final adoption, and instead are being proposed for inclusion in the Commission's project review regulations, given that they would establish a binding norm more appropriately contained in regulation.

The addition of a new section, 18 CFR §806.6 – Project limitations, provides that projects proposing to withdraw water in drainage areas equal to or less than ten square miles shall not be approved unless, in the case of a surface water withdrawal, the use associated with the project would occur on the tract of land that is riparian or littoral to the surface water source from which the water is withdrawn, or would be used to provide source water to a public water supply system. Likewise, a groundwater withdrawal that impacts a surface water source which, from the point of impact is in a headwater area, would not be approved unless the water use associated with the project would occur on the tract of land from which the water is withdrawn, or would be used to provide source water to a public water supply system. Language is also included that provides that withdrawals by public water supply systems shall be limited for use within the system's service area, and not for bulk sale outside such area.

It is generally recognized that the smaller the drainage area, the less the amount of water that can be removed from it sustainably. On the whole, headwater areas of ten square miles or less have very limited yields, resulting in very limited water availability. The Commission believes it is appropriate, as a matter of sound public policy, to prioritize how that limited resource should be utilized by restricting its withdrawal for only uses within those areas or otherwise for public water supply.

So as not to prejudice administratively complete applications currently undergoing review as of the date of this Notice of Proposed Rulemaking, the Commission intends to exempt such applications from the scope of this new rule if and when finally adopted.

In addition, the Commission finds it desirable to clarify the provisions of 18 CFR §806.34 relating to the issuance of emergency certificates by the Executive Director. Amendatory language is proposed in paragraph (a) of §806.34 providing further criteria to apply in the exercise of this authority; namely, that consideration should be given to actions deemed necessary to sustain human life, health and safety, the life, health or safety of livestock, or the maintenance of electric system reliability, along with such other priorities established by the Commission relating to drought emergencies.

Language is also proposed to 18 CFR §806.34(b) and (b)(2)(iii) clarifying that the authority is applicable to both unapproved projects and those operating under an existing Commission approval.

### **List of Subjects in 18 CFR Part 806**

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission proposes to amend 18 CFR Part 806 as follows:

## **PART 806—REVIEW AND APPROVAL OF PROJECTS**

### **Subpart A – General Provisions**

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

2. In Part 806, revise the Table of Contents for Subpart A to read as follows:

Subpart A – General Provisions

Sec.

806.1 Scope.

806.2 Purposes.

806.3 Definitions.

806.4 Projects requiring review and approval.

806.5 Projects that may require review and approval.

806.6 Project limitations.

806.7 Transfer of approvals.

806.8 Concurrent project review by member jurisdictions.

806.9 Waiver/modification.

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3. In §806.4, revise paragraph (a) to read as follows:

**§806.4 Projects requiring review and approval.**

(a) Except for activities relating to site evaluation or those authorized under §806.34, and subject to the limitations set forth in §806.6, no person shall undertake any of the following projects without prior review and approval by the Commission. The project sponsor shall submit an application in accordance with subpart B and shall be subject to the applicable standards in subpart C.

\* \* \* \* \*

**§§806.6 through 806.8 [Redesignated as §§806.7 through 806.9]**

4. Redesignate §§806.6 through 806.8 as §§806.7 through 806.9, and add new §806.6 to read as follows:

**§806.6 Project limitations.**

Except for existing projects undergoing approval, modification or renewal, any project requiring review and approval under this section and involving a withdrawal from a surface water source which, from the point of taking, has a drainage area of equal to or less than ten square miles, or any groundwater withdrawal that may impact a surface water source which, from the point of impact, has a drainage area of equal to or less than ten square miles, shall not be approved unless:

(a) In the case of a surface water withdrawal, the water use associated with the project will occur on the tract of land that is riparian or littoral to the surface water source from which the water is withdrawn, or will be used to provide source water to a public water supply system, as that term is defined in § 806.3 or by statute or regulation of the host member state, for use within the system's service area and not for bulk sale outside such area.

(b) In the case of a groundwater withdrawal, the water use associated with the project will occur on the tract of land from which the water is withdrawn, or will be used to provide source water to a public water supply system, as that term is defined in § 806.3 or by statute or regulation of the host member state, for use within the system's service area and not for bulk sale outside such area.

5. In §806.34, revise paragraphs (a), (b), (b)(2), and (b)(2)(iii) to read as follows:

**§806.34 Emergencies**

(a) *Emergency certificates.* The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property,

or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part. In the exercise of such authority, consideration should be given to actions deemed necessary to sustain human life, health and safety, or that of livestock, or the maintenance of electric system reliability to serve such needs, or any other such priorities that the Commission may establish from time to time utilizing its authority under Section 11.4 of the Compact related to drought emergencies.

(b) *Notification and application.* A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. In the case of a project operating under an existing Commission approval seeking emergency approval to modify, waive or partially waive one or more conditions of such approval, notice shall be provide to the Commission prior to initiating the operational changes associated with the request. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, electronic mail or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

\* \* \* \* \*

(2) At a minimum, the application shall contain:

\* \* \* \* \*

(iii) Location map and schematic of proposed project, or in the case of a project operating under an existing Commission approval, the project approval reference and a description of the operational changes requested.

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Dated: December 17, 2012.

Thomas W. Beauduy,  
Deputy Executive Director.

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